



MEMORANDUM

PUBLIC WORKS - DEVELOPMENT SERVICES

P17CU00001

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FOR BOARD OF SUPERVISORS MAY 21, 2019 PUBLIC HEARING

TO: HONORABLE BOARD OF SUPERVISORS

FROM: Jim Portner, Hearing Administrator

DATE: April 9, 2019

DOCUMENT: P17CU00001

AMENDED CONDITIONAL USE PERMIT REQUEST FOR PUBLIC HEARING:

Request of TK Family, LLC, on property located at 11011 E. Tanque Verde Road, in the **RVC (Rural Village Center) Zone**, for a modification/expansion of an existing Type II conditional use permit for a restaurant, in accordance with Section 18.41.040.A of the Pima County Zoning Code. (District 4)

CASE BACKGROUND AND PARTICULARS

This is a request to amend an existing conditional use permit (CUP) that was approved by the Board of Supervisors (under the same above case number) in October, 2017. The current application is conceptually similar to that original request, in that the owner/applicant seeks to establish a neighborhood family restaurant on the property in a rustic “barnyard” setting. The current request, however, represents a material expansion of the original approval in terms of the size, capacity, and amenities associated with the restaurant. For example, the original CUP embodied approximately 3,700 SF of usable restaurant area (indoor and outdoor), while the current request totals over 7,400 SF (an effective doubling). This triggers a related increase in required parking spaces. More than forty (40) outdoor serving tables are now proposed (while the original application had a fraction of that), along with an outdoor pizza kitchen, smoker, and large-format TV screens. Further, the current proposal seeks an outdoor stage, and an area dedicated to bocci ball and ring toss. While all of these are clearly complementary activities to the main restaurant, they just as clearly amount to a significant increase in the overall intensity of the proposed use.

SUMMARY OF THE HEARING ADMINISTRATOR MEETING

In accordance with Pima County Zoning Code Section 18.97.030.F.3, a public hearing was held on this application on April 4, 2019. The applicant presented the case to the hearing administrator and answered his various questions.

Several members of the public attended the hearing, four (4) of whom elected to speak on the matter. One (1) of the speakers expressed support for the request due to the general lack of services in the Tanque Verde Valley, together with his beliefs that the owners had been responsive to neighbor concerns; this individual did not live nearby the subject property. Three (3) of the speakers lived immediately adjacent to the site and were more in opposition, not so much to the generic idea of a family restaurant, but to certain aspects of the operation that caused them material concern. Specific issues raised were the potential for outdoor noise, odors (from the proposed meat smoker running potentially around-the-clock), and general privacy.

Staff indicated that it had received two (2) phone call inquiries on the case prior to the public hearing. Two (2) of the above speakers also submitted written letters to detail their concerns and objections.

After hearing all of the above, the Hearing Administrator closed the public hearing.

HEARING ADMINISTRATOR’S COMMENTS

This Hearing Administrator’s approval of the original 2017 conditional use permit focused heavily on the intensity of the proposed use within the context of its adjacent lower-density residential neighbors. That original focus remains unchanged with this modified request. It is still the Hearing Administrator’s position that the concept of a restaurant in this location is both acceptable and appropriate in light of its adjacency to a major transportation arterial and given the general lack of goods and services that characterizes the surrounding Tanque Verde Valley.

That being said, however, Tanque Verde Road is hardly an intensive commercialized corridor like that we see in other more urbanized areas of Pima County. Introducing a restaurant at this specific location demands that its scope and operation be appropriately framed so as to strike the requisite balance between commercial objectives and the established character of the surroundings. The property is zoned Rural Village Center (RVC); the term “rural” is there for a reason. Restaurants are not allowed in RVC by right; they are only permitted as *conditional* uses.

It is the Hearing Administrator’s finding and position that the proposed restaurant can be successfully run in this location in a way that strikes a proper balance, but that this would not be the case if the applicant is granted the full measure of their present request. The recommendation presented below makes material modifications and reductions to the applicant’s request; these preserve the framework for a successful restaurant while still respecting valid neighbor concerns.

HEARING ADMINISTRATOR’S RECOMMENDATION

After visiting the subject property and considering the facts and testimony presented at the public hearing, together with the written materials submitted by the applicant and neighbors, the Hearing Administrator recommends a modified **APPROVAL** of this request for a Type II conditional use permit for a restaurant. The applicant is advised that this is a *recommendation* to the Board of Supervisors, who will make the ultimate and final decision on this CUP request.

Should the Board of Supervisors agree with the Hearing Administrator’s recommendation for approval, it is suggested that this approval be granted subject to the following standard and special conditions:

Standard Conditions & Requirements per the Pima County Zoning Code

1. A restaurant, including a cocktail lounge or a bar, is allowed in the RVC zone subject to: 1) the provisions of Section 18.43.030.F (CB-1 Local Business Zone); and 2) no drive-in restaurants are permitted.

Special Conditions – Hearing Administrator

1. This conditional use permit is for the operation of a family restaurant only, together with those ancillary support activities that normally and routinely accompany such an establishment. No other or more intensive commercial uses are approved for the site.
2. Indoor and outdoor use areas are restricted to only those shown on the submitted concept site plan. Any request to further expand or materially modify these areas or this conditional use permit approval and its special conditions shall require a new Type II conditional use permit application, public notice, and public hearing process.
3. The proposed use shall substantially conform with the location and particulars as shown on the submitted conceptual site plan that was provided by the applicant in conjunction with this amended conditional use permit application. The following modifications to same are hereby stipulated by the Hearing Administrator:
 - Television screens are permitted in the outdoor dining area, but video only is allowed, no audio.
 - The outdoor pizza kitchen is permitted as shown on the submitted concept plan.
 - No outdoor smoker is permitted.
 - A minimum 6’ tall decorative masonry wall, similar in material and style to the existing decorative wall on the property, shall be provided along the property’s western boundary to screen the expanded parking and its trash/dumpster area, and to further mitigate noise. The wall shall extend from the site’s southwest corner, northward to a point ten feet (10’) north of the proposed water-harvesting basin.
 - Trellises with climbing vines (e.g. catclaw or climbing fig) shall be planted every twenty feet (20’) on-center along the western-facing and northern-facing facades of the proposed sound-mitigating cargo containers. The vines shall be appropriately watered by a permanent irrigation system.
 - Required bufferyards in accordance with Section 18.73 (Landscape Buffering and Screening) and the Pima County Landscape Design Manual shall be provided.
4. Hours of operation are as follows: 1) for enclosed/indoor activities, 8:00 AM through 10:30 PM, seven days a week; and 2) hours of operation for all outside activities (including the outdoor dining area) remain as originally approved in 2017, i.e. from 8:00 AM to 9:00 PM, Monday through Thursday and from 8:00 AM to 10:00 PM on Friday and Saturday.
5. Use of the proposed outdoor stage is limited to acoustic and non-amplified music only, or to other activities where no amplified sound or public-address is employed. Use of the stage is limited to Friday and Saturday evenings only.

6. No amplified music or loud speakers are allowed in the outdoor dining area, beer garden, bocci ball court, ring-toss area, and (once again) the outdoor stage.
7. Use of the cargo containers for storage is limited to the northeastern-most container only.
8. No formal Development Plan (DP) process is required in conjunction with this conditional use permit application. The Chief Zoning Inspector (CZI) or his designee shall coordinate review of the final site plan to determine its sufficiency for permitting purposes and/or to effectuate any modifications necessary to fully comply with all applicable codes and the above Hearing Administrator modifications. The CZI or his designee will coordinate with the Department of Transportation and the Regional Flood Control District as appropriate to ensure that their respective special conditions (see below) are honored.
9. The public/customer driveway access and the public parking area shall be minimally surfaced with gravel or an acceptable alternative so as to control the generation of dust, subject to approval by the Department of Transportation. The Hearing Administrator does not support the use of conventional asphalt or concrete pavement.
10. Use of the private access easement along the property’s eastern boundary is limited to employees, deliveries, and maintenance vehicles only. No customer access is allowed.

Special Conditions – Department of Transportation

1. Access to the site shall be limited to the existing driveway on Tanque Verde Road.
2. An updated traffic study must be reviewed and approved prior to the approval of any permit. This updated traffic study may identify additional offsite improvements are now warranted by the increase in trip generation. Any new offsite improvements identified will be the sole responsibility of the developer.
3. A site plan containing the layout and design of the parking lot and surface treatment, design of the driveway, and onsite drainage facilities must be reviewed and approved prior to the approval of any permit (refer to Hearing Administrator *Special Condition* No. 8 above).
4. The developer will contribute \$14,000 to the Tanque Verde/Tanque Verde Loop intersection improvement project (No. 4TVTVL) for the extension of the center left turn lane to accommodate this development.

Special Conditions – Regional Flood Control District

1. All new structures, building expansions, new service equipment and tenant improvements shall be reviewed by the District to evaluate floodplain use permit requirements.
2. The applicant shall submit a drainage report and site construction permit application, showing floodplain extent and depth on the site and demonstrating no adverse impact to adjacent properties, for District review and approval.

REQUIRED STANDARDS AND FINDINGS

Following are the Hearing Administrator’s findings relative to the standards set by Pima County Code Sec. 18.97.030.F.3.c. These Sections stipulate that the following standards be met by the proposed use:

1. It will not be in serious conflict with the objectives of the general land use plan or the area plan in which situated.

The Pima County Comprehensive Plan designates this site and the surrounding private properties as *Neighborhood Activity Center (NAC)*, the purpose of which is to provide designated areas for the provision of neighborhood-level goods and services for the convenience of surrounding residents.

The Hearing Administrator’s original 2017 approval of a conditional use permit for a family restaurant focused heavily on the intensity of that use adjacent to its lower-density residential context to the west, north and northeast. Intensity of use remains a prime focus with this revised CUP application, in that it seeks a materially expanded amount of usable restaurant space and other activities. With this focus in mind, it is the Hearing Administrator’s conclusion that the current request is approvable and appropriate only if certain modifications are made so as to ensure its intensity and associated impacts remain appropriate for the aforementioned adjacent residential context. Yes, Tanque Verde Road may be a major transportation arterial. However, it in no way embodies an established commercial corridor. A restaurant will work in this specific setting and provide a needed service for the surrounding residents as long as it is suitably and appropriately mitigated.

All things considered, it is the Hearing Administrator’s position that the proposed restaurant concept is consistent with the purpose of the *Neighborhood Activity Center (NAC)*. It can co-exist properly with its adjacent lower-density residential context if it is operated in accordance with the *Special Conditions* prescribed above.

2. It will provide safeguards for the protection of adjacent developed property, or if the adjacent property is undeveloped, for the legal permitted uses of such property.

It is the Hearing Administrator’s position that the proposed conditional use, if conducted in substantial conformance with the submitted concept site plan and the *Special Conditions* prescribed above, will satisfactorily safeguard the adjacent properties and their permitted uses of same.

3. It has adequate accessibility to the County road network.

The site has direct access to E. Tanque Verde Road, which is a paved, public street and is a designated “major street” on the Pima County Major Streets & Routes Plan. Access is found to be adequate, as long as it is controlled in accordance with the *Special Conditions* attached to this approval.

4. It has sufficient off-street parking and loading facilities, that will be developed in accordance with County engineering standards.

Required parking shall be reviewed accordingly by staff at the time of final permitting.

5. It will meet County standards in terms of control of noise, smoke, glare or heat, odors, vibrations, fly, ash, dust, fumes, vapors, gasses, and other forms of air pollution, liquids and solid wastes.

It is the Hearing Administrator’s finding that the new use poses no significant public threat in any of the above ways, except in the potential case of dust, noise and odors. *Special Conditions* have been crafted to address the proper operation of this restaurant use to mitigate these potential impacts.

6. Hours of operation will not be detrimental to adjoining residents.

Hours of operation are addressed in the proposed *Special Conditions*.

7. Landscaping will be fully in conformance with zoning code regulations.

Required landscape buffers shall be delineated on the required site plan and reviewed by staff at the time of final permitting. *Special Conditions* ensure same.

SONORAN DESERT CONSERVATION CONCEPT PLAN/ENVIRONMENTAL ISSUES

Comprehensive Plan Regional Environmental Policies — Conservation Lands System

In December, 2001 the Board of Supervisors incorporated the Maeveen Marie Behan Conservation Lands System (MMB-CLS) into the Comprehensive Plan 2001 Update as the Regional Environmental Policies. The MMB-CLS is the heart of the Sonoran Desert Conservation Plan (SDCP). On June 21, 2005, the Board of Supervisors amended the Comprehensive Plan Regional Environmental Policies and the MMB-CLS to reflect recommendations from the SDCCP Science Technical Advisory Committee that were based on new scientific and technical data. As adopted, Conservation Guidelines associated with the MMB-CLS establish conservation objectives for a variety of projects (e.g. rezoning actions, comprehensive plan amendments, Type II and Type III conditional use permits, etc.) that require a discretionary decision by the Board of Supervisors. Conservation objectives include:

1. Important Riparian Areas — 95% undisturbed natural open space
2. Biological Core Management Areas — 80% undisturbed natural open space
3. Special Species Management Areas — 80% undisturbed natural open space
4. Multiple Use Management Areas — 66-2/3% undisturbed natural open space

The westernmost portion of the subject property (**approximately 40% of the total site area**) is located **within the BIOLOGICAL CORE MANAGEMENT AREA** of the SDCCP’s Biologically-Preferred Reserve System. The **remainder of the property is OUTSIDE OF** the MMB-CLS.

Staff Commentary on Biological Impacts

Staff has reviewed this application and finds that, as long as it is placed on the site in conformance with the submitted conceptual site plan: 1) its approval is not expected to affect any resources essential to Pima County’s biological conservation priorities; and 2) it would not be in conflict with the Regional Environmental Policies of the 2001 Comprehensive Plan Update. The property has already been developed under past uses and has been significantly impacted; no additional material impacts will result from the approval and operation of this conditional use permit.

Facts Confirmed by the Pima County Geographic Information System (GIS)

The following facts are confirmed by the Pima County GIS and the Sonoran Desert Conservation Plan maps with respect to this conditional use permit request:

Cactus Ferruginous Pygmy Owl. The subject property is located within an area that was designated as former critical habitat and is part of draft recovery area. It is within Survey Zone 2. This site is located within the Priority Conservation Area (PCA) for this species.

Western Burrowing Owl. The subject property is not located within the Priority Conservation Area for this species.

Pima Pineapple Cactus. The subject property is located within a general area outside of the known range for the Pima Pineapple cactus. It is not within the Priority Conservation Area (PCA) for this species.

Needle-Spined Pineapple Cactus. The subject property is located within a general area that is outside of the known range for the Needle-Spined Pineapple cactus. It is not within the Priority Conservation Area (PCA) for this species.

DEPT. OF TRANSPORTATION & FLOOD CONTROL RECOMMENDATION:

The Department of Transportation and the Regional Flood Control District have both reviewed this application and provided specific comments and recommended special conditions. Same have been incorporated into the Hearing Administrator’s formal recommendation above.

attachments

cc: Carla Blackwell, Director, Development Services
Dan Ice, Chief Building Official
Chris Poirier, Planning Official
Tom Drzazgowski, Chief Zoning Inspector
Lauren Ortega, DSD/DOT
Ann Moynihan, RFCD
TK Family, LLC, Owner & Applicant